



**THE ATTORNEY GENERAL  
OF TEXAS**

December 24, 1986

**JIM MATTOX  
ATTORNEY GENERAL**

Honorable Roy Blake  
Chairman  
Committee on Administration  
Texas State Senate  
P. O. Box 12068  
Austin, Texas 78711

Opinion No. JM-594

Re: Whether a county judge  
may also serve as director of  
a river authority

Dear Senator Blake:

You inquire about the legality of an elected official who serves with pay also serving as director of a river authority. You state that a director of the Angelina and Neches River Authority has been elected to the office of county judge in Cherokee County, to a term beginning January 1, 1987. You wish to know whether he may serve in both positions.

Article XVI, section 40, of the Texas Constitution provides the answer to your question. This constitutional provision states as follows:

Sec. 40. No person shall hold or exercise at the same time, more than one civil office of emolument, except that of Justice of Peace, County Commissioner . . . [other exceptions not applicable] unless otherwise specially provided herein.

Tex. Const. art. XVI, section 40.

A director of the Angelina and Neches River Authority occupies a civil office of emolument. Management and control of the affairs of the district is vested in the board of directors, which consists of members appointed by the governor and confirmed by the senate. Acts 1935, 44th Leg., ch. 97, §4 at 239; Acts 1945, 49th Leg., ch. 287 at 456 (formerly codified as V.T.C.S. art. 8280-108, §4). Various governmental powers are conferred upon the directors of the river authority, including the power to issue notes and other obligations secured by revenues of the district. See Acts 1935, 44th Leg., ch. 97, §§11, 14-18 at 241, 242-6. The directors are to receive ten dollars for each day of service necessary to carry out their duties, provided that the service is authorized by vote of the board of directors. Acts 1935, 44th Leg., ch. 97, §8 at 241. The directors of

the river authority exercise sovereign functions of the government largely independent of the control of others, and they receive compensation for serving. See Aldine Independent School District v. Standley, 280 S.W.2d 578 (Tex. 1955). They are therefore civil officers of emolument within article XVI, section 40, of the Texas Constitution. See also Attorney General Opinions JM-172 (1984) (directors of river authorities are not included within exemption in article XVI, section 40 for directors of soil and water conservation districts); M-45 (1967) (director of Water Control and Improvement District occupies civil officer of emolument); O-490 (1939) (director of Brazos River Conservation and Reclamation District occupies civil office of emolument).

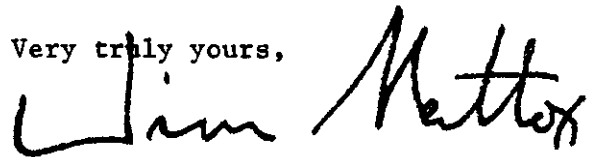
A county judge occupies a civil office of emolument. See Tex. Const. art. V, §15, see also Attorney General Opinion V-1541 (1952); Letter Advisory No. 61 (1973). He does not fall within any of the exceptions to article XVI, section 40. County commissioners are excepted from that provision, but even though the county judge presides over the commissioners court, he occupies a distinct elective office with duties that differ from those of the four county commissioners. See e.g., Tex. Const. art. V, §§15, 18; art. XVI, §65.

Article XVI, section 40, of the Texas Constitution bars one person from serving as director of the Angelina and Neches River Authority and at the same time serving as a county judge. In this case, the individual's qualification for the office of county judge operates as a resignation from his office as director of the river authority. See State ex rel. v. Brinkerhoff, 17 S.W. 109 (Tex. 1886). The office of director thereby becomes vacant.

#### S U M M A R Y

Article XVI, section 40, of the Texas Constitution prevents one person from serving as a county judge and as director of the Angelina and Neches River Authority.

Very truly yours,



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